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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/647,313

08/26/2003

Valerie Dumont Dicianna

15632-US-NP

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07/19/2006

MARKS & CLERK

1075 NORTH SERVICE ROAD WEST

SUITE 203

OAKVILLE, ON L6M 2G2

CANADA

EXAMINER

DODSON, SHELLEY A

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,313

Applicant(s)

DICIANNA, VALERIE DUMONT

Examiner

SHELLEY A. DODSON

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RESPONSE DATED 5/15/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

1.

Applicant's arguments filed May 15, 2006 have been fully considered but they are not deemed to be persuasive.

2.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-16 of the above stated claims are viewed as indefinite because of applicant's use of the phrase "sheet-like". It is not readily apparent to the examiner what applicant intends by said phrase. Either it is a sheet or it is not a sheet. When the term "like or type" is appended to an otherwise definite expression, "like or type" so extends the scope of the expression as to render it objectionably indefinite. Ex parte Copenhaver, 109 USPQ 118. Clarification is necessary in the above stated matter.

Claim Rejections - 35 USC § 103

4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5.

Claims 1-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Braun USP 5,972,360, cited and supplied by applicant (R1) in view of McAtee et al USP 6,153,208 (R2) and further in view of both Murad USP 6,630,163 and Letini et al USP 5,514,367 for the reasons stated in the previous office action.

Applicant is arguing that the prior art is not teaching multiple sheets in a dispenser or container. Braun teaches towelettes, plural which means more than one in a packet or container which the examiner views as a dispenser. The second reference, McAtee is teaching disposable cleansing articles and

sheets which are in a container. The second argument with respect to the green tea of McAtee being employed as a skin lightening active is also found to be a moot issue. Applicant is reminded that when the composition or product is found in the prior art that statements of intended use are of now patentable distinction. It is the examiner's position that given the fact that the prior art reference of Braun is directed toward a self-tanning product and the presence of the green tea found in McAtee found in the secondary teaching that the green tea would have the same effect in the Braun method of self-tanning.

Additionally, Murad discloses method of treating dermatological disorders with fruit extracts. In column 2, lines 40-45 Murad further discloses that The Rose Sheet April 1, 1996, Vol. 17, Issue 14 discloses a self tanner formulation with alpha and beta hydroxy acids. Further said articles discloses that the complexes also contain apple extract and green tea to extend color of the skin and prevent skin peeling.

Additionally, with respect to the specific emollient claimed by the applicant, Letini et al discloses skin tanning compositions and preparation. In column 6, lines 5-15 Letini discloses PPG-12-buteth as an emollient to achieve penetration of artificial tanning formulations for use on the human epidermis.

It is the examiner's position that the applicant is arguing limitations which are found in the prior art and are not patentably distinct. Furthermore with respect to the method of producing said self-tanning formulation, no patentable distinction can be found with respect to said process limitations either. Applicant is merely arguing the presence of the green tea and the specific emollient of PPG-12-Buteth-16 to distinguish the process rather than the actual process limitations.

Telephone Inquiries


5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (571) 272-0612 and fax number (571) 273-0612. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached at (571) 272-0646.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

July 13, 2006